

General Purchasing Conditions



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1 Coverage

1.1 The legal relationships between the supplier and the Novem car interior design GmbH and/or their subsidiaries (hereinafter termed „Novem“) (together termed: „parties“) are exclusively based on these general purchasing conditions and other contingent agreements. Deviant, contrary or supplementary general terms and conditions of business of the supplier do not apply even if they are not expressly contradicted in an individual case.

1.2 These purchasing conditions apply exclusively vis-à-vis entrepreneurs in the sense of paragraph 14 of German Civil Code (BGB).

2 Offer; Contract conclusion

2.1 Supply contracts (order and acceptance) and delivery calls as well as their changes and supplements require the written form. The written form requirement is also safeguarded through telecommunication (telefax, email).

2.2 Should the supplier not accept the order placed by Novem within a period of three (3) days, by returning the signed order confirmation, then Novem will no longer be bound to the order at the end of the period in as far as another binding period is not expressly agreed upon. Delivery calls are deemed accepted if the supplier does not contradict within ten (10) workdays from receipt.

2.3 Within the scope of reasonableness to the supplier, Novem can demand changes in design and execution of the delivery object. At the same time, the effects, especially with respect to additional and minimum costs as well as the delivery date, are to be regulated adequately and amicably.

2.4 Already in the offer stage, the supplier is obliged to draw Novem's attention to increased risks that can be associated with the object to be delivered or with the works. If such a hint by the supplier only occurs after the contract is concluded then Novem is entitled to withdraw from an already concluded contract.

3 Terms of payment; Cession

3.1 The price quoted in the order is binding. In the absence of deviant written agreement, the delivery is „carriage free“, i.e. „free up to recipient works“, including packaging. The return of packaging requires special agreement.

3.2 The statutory value added tax is not included in the price; this is billed separately.

3.3 As far as no deviant written agreement was made with the supplier, Novem pays after the delivery of the goods and receipt of invoice within 30 days under the deduction of 3% discount or within 60 days without deduction. With the receipt of premature deliveries, the due date depends on the agreed delivery schedule. Periods allowed for payment are not set in course provided that the supplier's invoice lacks the order number, identification number, and the delivery note number quoted by Novem cannot be identified or does not feature verifiable content.

3.4 Provided that the invoicing is agreed on in a credit procedure between Novem and the supplier, a credit will be issued by Novem instead of an invoice by the supplier.

3.5 The payment is made through remittance or by means of cheque.

3.6 For default in payment, we owe default interests in the amount of five percentage above the base interest rate in accordance with paragraph 247 if German Civil Code (BGB).

3.7 For incomplete or deficient performance, Novem is entitled to retain due payments in proportion of up to the proper fulfilment amount. Novem is entitled to the right of set-off and lien as well as to objection due to nonfulfillment of the contract within the statutory scope.

3.8 The supplier can offset his claims against the claims of Novem or exercise the right of lien pursuant to paragraph 273 German Civil Code (BGB) only if his claims are uncontested or are legally established or are mature for decision.

3.9 Novem is entitled to cede all claims from the legal relationships with the supplier without his consent. The supplier is not entitled to cede his claims from the contractual relationship to third party without express written consent of Novem. This does not apply as far as it concerns monetary claims from a mutual trade business.

4 Delivery; Schedules; Passing of risk; Default

4.1 Schedules, periods and delivery bulk agreed on are binding. Specified delivery periods are counted from the date the order is placed. What is decisive for compliance with the delivery date or with the delivery time is the arrival of the goods at the respective Novem works initiating the order (recipient works). Partial deliveries are allowed only with prior written approval of Novem.

4.2 The supplier is obliged to immediately inform Novem in writing if circumstances occur or become imminent, from which it is evident that the contingent delivery time cannot be met.

4.3 If failure to observe the delivery periods is based on acts of God or on similar events in the sense of Item 12 then the period extends proportionately.

4.4 Novem is not obliged to accept premature or belated delivery of goods unless otherwise partial deliveries or multiple deliveries are agreed on. Such deliveries can be rearranged at the expense of the supplier, or returned or stored. The same applies if the shipping papers do not contain the number and date of the order, identification, part number, number of pieces and/or bulk and a short description of the delivered goods and as such their allocation or inspection for proper delivery by Novem is not possible or is essentially made difficult.

4.5 As far as nothing otherwise is agreed upon, the delivery occurs free of charge up to the recipient works.

4.6 As far as we use delivery clauses in accordance with INCOTERMS, the latest version of the INCOTERMS 2010 is applicable.

4.7 Transport insurance costs are born by the supplier. If the takeover of the transport costs was agreed on by Novem, then the supplier has to select the shipping method prescribed by Novem, if no shipping method has been agreed on, he has to use the method that is most favourable to Novem.

4.8 As far as the goods produced for Novem are required for export, at the latest with the first delivery, a written declaration of the origin of the delivered object must be provided for customs purposes.

4.9 The origin of newly received delivery objects or a change of origin has to be drawn to the attention of Novem voluntarily and immediately. The supplier is liable for all disadvantages that are caused to Novem due to irregular or belated declaration by the supplier. If required, the supplier has to authenticate the origin of his goods by providing a note certified by his customs authority.

4.10 Should the supplier not provided his services nor do so within the agreed delivery period or come in default, then rights of Novem – especially for withdrawal and damage claims – are determined pursuant to the statutory provisions. The regulation in Item 4.11 remains untouched.

4.11 In case of default in delivery, Novem is entitled irrespective of the statutory delay regulations, after prior written threat vis-à-vis the supplier, to claim a lump sum delay compensation in the amount of 1% of the contractual total for each begun delay week and/or offset the purchase price, however, altogether not exceeding 5% of the contractual total sum. If Novem estimates the actual incurred damages according to the statutory regulations, then the lump sum delay compensation herewith is taken into account. If the belated delivery is accepted, then Novem will claim for delay compensation at the latest with the final payment.

4.12 Likewise, Novem is entitled in case of default in delivery in cases of severe lack of means, especially with regard to its own delivery obligations, after prior written threat, to stock up otherwise at the expense of the supplier if it is no longer possible to set a period for delivery by the supplier because of special urgency.

4.13 The acceptance of belated deliveries does not mean renunciation of entitlement to damage claims. Payments made in the meantime or issued receiving certificates are not valid as recognition of proper delivery. Rejected goods are returned where appropriate at the expense and risk of the supplier.

5 Notification of defects

For the commercial duty and reprimand obligation, the statutory provisions (paragraphs 377, 381 German Commercial Code (HGB)) apply, subject to the following proviso: The duty of inspection by Novem is limited to defects that become apparent during the incoming goods inspection, under visual checks including the delivery papers, as well as at our quality control in random sampling process (e.g. transport damages, incorrect and short shipment). In addition, it matters to what extent an inspection is practicable under the consideration of individual circumstances of proper business transaction. The reprimand duty of Novem for later discovered defects remains untouched. In all cases the reprimand (defects notice) applies as immediate and timely if it is reported within two weeks after its discovery.

6 Quality and documentation

6.1 Novem imposes maximum requirements on its in-house and supplier quality and assurance. Materials and components ordered by Novem have to conform to the state of the art in technology, science and research to the respectively pertinent standards (DIN standards, EEC standards etc.) and comply with the safety regulations and with environmental protection provisions. The supplier vouches for strict compliance with these standards, just as for conformance of delivery with the prerequisite or supplier specified performance data and other characteristics. Nevertheless, should vagueness with regard to quality, dimension etc. be apparent on the part of the supplier, he is obliged to eliminate these through immediate consultation with Novem.

6.2 For the first sample test, reference is drawn to the VDA articles „Assurance of quality of deliveries – supplier selection / production process – and product release/quality performance in the series“ in their respectively valid versions. Independently of this, the supplier has to continuously review the quality of delivered objects and inform Novem if necessary about possible changes and improvements. Within the scope of quality assurance measures, the agreements made between the parties, for example, quality assurance agreements or ship-to-stock agreements have to be observed. For the first sample test required, where appropriate, by Novem before the release for production, it is decisive that the assessment „good“ be obtained from Novem.

6.3 If the type and scope of the test/inspection as well as the test means and methods between the supplier and Novem are not agreed on, then the parties jointly determine the respectively required state of the art of the testing technology.

6.4 With the technical documents or especially motor vehicle parts (for example, marked with „D“), the supplier has to additionally keep in special records (test/inspection documents) when, in which man-

ner, and by whom the delivered objects were tested with respect to compulsory documentation features and which results the required quality tests obtained. The test/inspection documents are to be stored for ten years and are to be presented to Novem upon demand. Pre-suppliers have to be obligated by the supplier within the scope of statutory possibilities to the same extent. As instructions, reference is drawn to the VDA article „Confirmatory test documentation - guidelines for the documentation and archiving of quality requirements“ in its respectively valid version.

6.5 So far as Novem or authorities that, for example, are responsible for motor vehicle safety or for re-test of certain requirements demand insight into the production process and/or test/inspection documents of the supplier, the supplier declares his readiness for this and at the same time provides reasonable assistance. The supplier will always guarantee Novem and/or the authorities the access to his works during the usual operating and business hours after prior notification.

6.6 The supplier has upon demand and proof of justified interest by Novem to the introduce and observe a quality management and quality assurance system, otherwise Novem is entitled to withdraw from the contract.

7 Rights relating to defects; Reservation of proprietary rights; Product liability

7.1 For the rights relating to material and defects of the goods (including incorrect delivery and short shipment as well as improper assembly, deficient assembly, operation instructions or operating manual) and in other breaches of duty by the supplier, the statutory regulations shall apply unless nothing otherwise is agreed upon.

7.2 The supplier guarantees that the contractual objects to be delivered are free of defects and comply with the requirements in the sense of Item 6.

7.3 Should more test/inspection than the test/inspection common for incoming goods be necessary as a result of defective delivery, Novem is entitled to penalize the supplier for each defective delivery, with a lump sum damage compensation in the amount of 75.00 Euro. The supplier is entitled to provide counter-evidence of lower expenses. Costs beyond this as well have to be borne by the supplier in case Novem proves this.

7.4 In case of delivery of defective goods, the supplier will be given reasonable opportunity for sorting out, improving or later supply prior to the beginning of fabrication, in as far as it is reasonable for Novem to do so. If the supplier cannot implement these measures or he does not fulfil a request relating to this within the deadline period, then Novem can withdraw from the contract, return the goods at risk and expense of the supplier and procure the stock otherwise, without the necessity for granting a further deadline.

7.5 In the event of partial deliveries or repeated deliveries of comparable or of the same products, Novem is entitled to immediate withdrawal from the entire order, also for the yet undelivered goods if two deliveries do not suffice with regard to bulk and/or quality according to the agreements or if standard practice tolerances are exceeded and the supplier was informed about this after the first deliveries and Novem has no interest in partial performance.

7.6 Novem is entitled, in the event of default or in the case of severe lack of means, especially with regard to its own delivery obligation, to undertake the elimination of defects at the expense of the supplier or to allow a third party to do the same if it is no longer possible because of special urgency to notify the supplier about the defects and the threatening damage and set a period for improvement. In the cases in which an improvement is not expedient and would be associated with higher costs - including the compensation claims to be expected and contractual penalties – as a replacement purchase, Novem is entitled to stock up otherwise at the expense of the supplier. If the circumstances allow, Novem will negotiate further action jointly with the supplier. 7.7 Claims from defects liability expire in 36 months, calculated from the passing of risk. This does not apply as far as the law prescribes longer periods.

7.8 The supplier agrees expressly that the products delivered by him may also be installed or processed and marketed worldwide by Novem. Property reservations of the supplier, as far as they have references to the obligations for payment by Novem, apply only to the respectively delivered goods by which the supplier reserved the property rights to himself. Extended and prolonged property rights are ruled out.

7.9 Should third party file claims against Novem because of product defect, then the supplier in an internal relationship promises to exempt Novem from every liability as far as the defect that establishes the product liability according to the principles of apparent proof or further statutory regulations falls under the responsibility of the supplier, thus especially within the scope of his instructions, design, production and test/inspection possibilities. The burden of proof, also for contingent relief possibilities in this case, is born by the supplier. The exemption obligation of the supplier from liability applies also to the claims against Novem from other absolute liability states of affairs as far as the supplier is considered to be the cause and in association with supplier causation contribution.

7.10 The supplier promises besides the usual liability insurance also to obtain and uphold a product liability insurance with a coverage total sum of 5 million Euro per person/damage for the property for the product liability risks. Novem is entitled to demand a proof of compliance with the insurance requirement. If Novem is entitled to further compensation claims, then they remain untouched.

8 Handed over drawings and tools; Provision of material; Reservation of proprietary rights in tools; Secrecy

8.1 For the execution of the order, Novem put the following at supplier's disposal, where appropriate, drafts, drawings, samples, models, films, CAD data formats or other data, as well as tools or material. No assignment of the right on or from such an object is associated with the transfer. The supplier is therefore obliged not to breach all rights of Novem to such objects, especially:

- a. the property, the copyright or other commercial protection rights by attaching hints that allows clear conclusions about the proprietary ownership of the right by Novem;
- b. to make duplication copies of such objects only within the framework of operational requirement and copyright provision;
- c. to undertake changes on such objects only after approval by Novem;
- d. to observe the copyright as well as special property regulation of parts produced according to the drawings of Novem;
- e. to use the objects received from Novem only for the execution of the order placed by Novem, to guard carefully, separately and free-of-charge for Novem and to rule out loss, damages or depreciation in value

8.2 Products made by using the objects handed over by Novem, which the supplier already hands over to Novem now, will become exclusive properties of Novem after manufacture. The contrary applies only in the case of mere provision of material: Should the material provided by Novem be joined with other objects by the supplier to form a thing and the other thing is considered the main thing, the supplier is obliged transfer proportionate co-ownership to Novem provided that the main thing belongs to the supplier. Disposal or passing on of handed-over objects as well as of the derivative products to third party without the consent of Novem is ruled out.

8.3 Novem reserves the property rights with respect to the tools; the supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by Novem. The supplier is obliged to insure the tools that belong to Novem, and/or the tools that belong to customers of Novem at new-price value at his own expense against fire, water and theft damages. He is obliged to carry out any required maintenance and inspection work at his own expense on time. He has to immediately report any disturbances to Novem; if he fails to do so, then liability claims remain untouched.

8.4 The supplier has to inspect provided material before starting the fabrication, for obvious detectable defects as well as to perform an identity check. The supplier has to implement tests/inspections prescribed in the fabrication plan, if necessary. Should the supplier find quality defects, Novem has to be informed immediately in order to coordinate further measures.

8.5 After fulfilment of the respective contract or already upon demand by Novem, all passed-on objects must be returned back to Novem, in the proper state, by the supplier under renunciation of possible retention right.

8.6 The party may advertise with its business connection only with prior written approval of the respectively other party.

8.7 The parties are reciprocally obliged to treat every nonobvious commercial and technical detail that become known to them through their business relationship as business secret vis-à-vis third party and to obligate his staff to comply respectively. They may be disclosed to third party only with express written approval of the other party respectively. The secrecy obligation applies also after termination of this contract; it lapses if and so far the special knowledge contained in the passed-on diagrams, drawings, calculations and other documents is or was evidently generally well known or well-known without the fault of the other party or was already available to the other party before the pass-on. The parties are further released from the secrecy obligation if they must disclose the information on the basis of statutory determinations or decrees of State organs, however, not before they have reported the circumstance to the other party in writing.

9 Intellectual property rights of third persons

9.1 The supplier is liable for claims that result from violation of patent rights and/or copyright, no matter whether the violation results from the delivery itself or its contractual use by Novem or its customers. Accordingly, the supplier promises to exempt Novem and its customers from the claims made against it for patent and copyright breach in full amount and to refund Novem and its customers all the incurred expenses in connection with this claim, unless, the supplier has produced the delivered object according to drawings, model or other equivalent information given by Novem, without knowledge or having to know the circumstance justifying a breach of intellectual property rights.

9.2 If third party makes claims pertaining to violation of patent rights and/or copyright, the supplier, besides the damage exemption obligation in Item 9.1, has to prevent further claims of breaches of the law;

- a. that he procures the required licenses relating to the alleged breach of patent or
- b. that he makes available to Novem a changed delivery object and/or parts thereof that in the case of exchange finally removes the violating delivery object and/or its part that removes the accusation relating to the delivery object. The supplier bears the incurred exchange expenses.

9.3 The parties are obliged to immediately inform the other party about notification of threatening or ensuing breach of intellectual property rights in order to be able to act against the claims amicably.

9.4 The supplier will inform Novem upon inquiry of the use of his own and licensed published and unpublished patent rights and patent applications on the delivery object.

10 Liability

10.1 Novem is liable without contractual limitation according to the statutory provisions

- for damages that are based on a breach of a guarantee assumed by Novem;
- because of intentional act;
- for damages that rest on fact that Novem concealed a defect maliciously;
- for damages such as life injury, body injury or health damage that are based upon an intentional or negligent breach of duty by Novem or otherwise based on intentional or negligent behaviour of a statutory representative or fulfilment assistant of Novem;
- for other damages apart from those itemized under indent marking for paragraph 4 that are based on an intentional or gross negligent breach of duty by Novem or otherwise based on intentional or gross negligent behaviour of a statutory representative or fulfilment assistant of Novem;
- according to the product liability law

10.2 In other cases than those mentioned in Item 10.1, the liability of Novem is limited to the contractually typical and foreseeable damage as far as the damage is based on a negligent breach of essential duties („cardinal duties“) by Novem or by a statutory representative or fulfilment assistants of Novem. Essential duties („cardinal duties“) are duties whose fulfilment generally first enables regular implementation of the contract and with whose compliance the supplier may have confidence.

10.3 In other cases than these mentioned under Item 10.1 and Item 10.2, the liability by Novem is ruled out because of negligence.

10.4 The objection to the contributory negligence remains untouched.

10.5 The foregoing regulations apply accordingly also to the benefit of the organs, statutory representatives, employees and other fulfilment assistants of Novem.

10.6 The foregoing regulations apply independently of whether it involves contractual or statutory claims, and accordingly also apply to the liability with regard to the replacement of vain expenses.

11 Impossibility; Contract adaptation

11.1 So far as the delivery is impossible, Novem is entitled to ask for compensation, unless the supplier is not responsible for the impossibility.

11.2 As far as unpredictable events in the sense of Item 12. considerably alter or influence the economic importance or the content of the delivery or significantly influence the operation of the supplier, the contract will be adapted under the consideration of loyalty and reasonable faith. As far as this is economically not justifiable, the supplier is entitled to withdraw from the contract. If he wants to make use of this withdrawal right, then he has to inform Novem immediately after knowing the scope of the event, thus even if at first an extension of the delivery time was agreed upon with Novem.

12 Acts of God

The party is freed for the duration of interference and to the extent of its effect on performance obligations in the event of acts of God, industrial disputes, unrest, official measures and other unpredictable, inevitable and serious events. The parties are obliged to give the required information within the scope of possibility and to adjust its obligation to the changed conditions in a loyal and faithfully manner.

13 Contract termination

13.1 In all other cases that entitle withdrawal or termination in the law or in these conditions, the following applies with regard to contractual termination:

- a. For the case that a party does not fulfil an essential contractual duty, the one party can notify the other party in writing about the alleged breach of contract and can set an adequate period for remedy, within which the breach of contract can be rectified. If the contract-breaching party does not respond to this demand within the period, then the other party can terminate the contract entirely or partially.
- b. In the event that one of the parties files or prepares for a bankruptcy proceeding over the asset, then the other party can take this as occasion to terminate the contract immediately if the contractual performance exchange will be affected by the bankruptcy proceeding - based on foresight.

13.2 The termination of the contract, no matter for which reason, does not release the party from the obligation to fulfilment that is already due or mature up to the contractual termination.

14 General provisions

14.1 Place of performance is the recipient works specified in the order by Novem.

14.2 Changes and additions of the contract and this GTC require the written form for their effectiveness. This applies also to the cancellation of this writing requirement.

14.3 Exclusive jurisdiction for deliveries and payments, as well as for all disputes ensuing from the contracts is the headquarters of Novem, so far as the supplier is a businessman in the sense of the Commercial Code. Novem is also entitled to complain before the court that is responsible for the seat or the branch office of the supplier with whom the contract was concluded.

14.4 The contractual relationship is exclusively subject to the law of the Federal Republic of Germany. The application of the legal norm of the German conflicts of law as far as they refer to a foreign legal system, as well as the application of other conventions about the law of sales of goods, especially UN purchase law are excluded.

14.5 If a provision of these purchasing conditions should be or become entirely or partially ineffectual or unworkable, the effectiveness of the remaining provisions and the validity of the remaining contractual contents thereof is untouched. The parties promise to replace ineffectual or unworkable provisions with such that if possible nearly come close to the result of the ineffectual or unworkable provision originally pursued economically by the parties. The same applies to closing possible contractual loopholes. The foregoing regulations apply accordingly also if the ineffectiveness or impracticability of a provision affects a measure of the performance or time (period or schedule) prescribed in this contract.